IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 87 OF 2006

Garware Enterprises Ltd. ... Appellant
VS.
Care Marketing Co. Pvt. Ltd. . ... Respondent

Ms. Anita Cartellino i/b. M/s. Pandya & Co., for appellant
Mr. M. M. Sathaye for respondent

CORAM: D. G. KARNIK **J.**

DATE: November 24, 2006

P.C.:

1. Heard learned counsel for the parties.

2. This appeal is directed against the judgment and order dated 24th October 2005, delivered by the Civil Judge, Senior Division, Nasik, directing return of the plaint to the appellant – plaintiff for presentation to proper court.

3. The appellant company appointed the respondent as a dealer on a principal to principal basis and two agreements were executed between the parties to that effect on 10th April 1995.

Under the said agreements the appellant agreed to supply to the respondent Heat Shrinkable Sleevings on the terms and conditions mentioned therein. Accordingly supplies were made by the appellant to the respondent from time to time. Disputes arose between the parties in respect of the goods supplied. The respondent rejected certain goods on the ground that they were not as per the agreed specifications and sent debit notes to the appellant. According to the appellant the respondent did not pay the price amounting to Rs.8,47,562/- . The appellant therefore filed a suit, being Special Suit no. 336 of 1996, in the court of Civil Judge, Senior Division, Nasik for recovery of the amount due. The respondent contended that the court of Civil Judge, Senior Division, Nasik, had no jurisdiction to entertain and try the suit. It also contested the suit on merits. After recording the evidence on all points the trial court came to the conclusion that the court at Nasik had no jurisdiction to entertain and try the suit and ordered return of the plaint. That decision is impugned in this appeal.

4. In the trial court the respondent relied upon the terms of the contract as well as in the invoices. At the top of the contracts at exhibits 63 and 65 it is specifically mentioned that the agreement was subject to Bombay jurisdiction. Considering this term as well as the invoices the trial court held that the

court at Nasik had no jurisdiction and only the court at Bombay had the jurisdiction to entertain and try the suit. The court accordingly ordered return of the plaint.

5. Learned counsel for the appellant submitted that where two or more courts have jurisdiction it is open to the parties to agree that one of such court would have exclusive jurisdiction. However, if no part of the cause of action had arisen within the jurisdiction of a court the parties cannot by contract choose such a court to have exclusive jurisdiction. Parties cannot by consent confer exclusive jurisdiction on the court which has none. Counsel for the appellant submitted that in the present case no part of the cause of action had arisen at Bombay. The goods were supplied to the respondent at Delhi from the appellant' s facto ry at Nasik and therefore cause of action had arisen partly at Nasik and partly at Delhi. No part of the cause of action had arisen at Bombay and therefore the court at Bombay had no jurisdiction. He submitted that despite the clause in the invoices that the court at Bombay would have exclusive jurisdiction was of no consequence and the suit could be only filed at Nasik or Delhi where part of the cause of action had arisen.

6. It is true that parties cannot by consent confer jurisdiction on

a court which was none. If no part of the cause of action has arisen within the jurisdiction of a court then notwithstanding the clause in the contract that the court would have jurisdiction it would get it. In the present case therefore it is required to be seen whether any part of the cause of action has arisen within the jurisdiction of the court at Mumbai.

7. Firstly, the contracts of dealership at exhibits 63 and 64 are written on the letter head of the appellant. The letter head gives three addresses. The first address is of the factory at Nasik. The second address is of the administrative office at Bombay. The third address is of the registered office at Aurangabad. The agreement does not mention the place where it was signed. The possibility of the agreement being signed at Bombay cannot be ruled out, because generally the administration of the company would be done from the administrative office of the company which is situated at Bombay. All the invoices clearly mention that they are subject to Bombay jurisdiction. No explanation was offered by the appellant as to why the invoices mentioned “subject to Bombay jurisdiction” if the goods were not being supplied from Bombay or no part of cause of action had arisen in Bombay. Secondly, what is material to note is that the previous contract at Exhibit 66 between the respondent and Moss Plastics & Films Private Limited (which was the

previous name of the appellant) is also produced on record. It also mentions that the contract was subject to Bombay jurisdiction. Thus all the documents mention that the contract was subject to Bombay jurisdiction. Thirdly the appellant' switness Chandrashekhar Purushottam Sathe was put a specific question that the cheques for payment used to be issued at Bombay and credited at the appellant's account at Bombay under the name 'Moss' which was the previous name of the appellant. The witness stated that he did not know whether the cheques were credited at the appellant' s account at Bombay in the name of 'Moss' . Thus the appellant did not deny the fact that the payment was being made at Bombay and was credited at the appellant's account in Bombay. Therefore it appears that part of the cause of action did arise at Bombay.

8. For these reasons it cannot be said that the view taken by the lower court that Bombay court had exclusive jurisdiction to entertain and try the suit is an erroneous view. There is no merit in the appeal which is hereby dismissed with costs.

(D.G. KARNIK J.)